

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT J. HOWELL,

Plaintiff,

vs.

Civil Action 2:13-cv-406
Judge Watson
Magistrate Judge King

MICHAEL CONKLE, et al.,

Defendants.

REPORT AND RECOMMENDATION

This is a civil rights action under 42 U.S.C. § 1983 in which plaintiff alleged that defendants, Perry Township, one of its police officers and its trustees, violated plaintiff's civil rights when plaintiff was arrested on a warrant directed to another person. On March 25, 2014, plaintiff filed *Plaintiff's Notice of Acceptance of Offer of Judgment*, ECF 13. The notice stated that plaintiff intended to submit a petition for costs and attorney's fees. *Id.* The Clerk of Court entered judgment for plaintiff the next day. ECF 15. Plaintiff thereafter filed a motion for attorney's fees pursuant to Fed. R. Civ. P. 68(a) and 42 U.S.C. §§ 1983, 1988. ECF 19. The parties disagreed whether the offer of judgment included costs and attorney's fees. Defendants argued that costs were included in the offer of judgment and, alternatively, sought relief from judgment pursuant to Fed. R. Civ. P. 60(b)(6). ECF 20. On October 24, 2014, the Court concluded that plaintiff is entitled to an award of costs, including reasonable attorney's fees, and denied defendants' motion for relief from judgment. *Opinion and Order*, ECF 23.

This matter is now before the Court, upon a specific order of reference pursuant to 28 U.S.C. § 636(b)(1)(B), *see Opinion and Order*, ECF 23, for a report and recommendation on "the issue of the reasonableness of the fees." *Id.* at pp. 13-14. On October 24, 2014, the undersigned issued an *Order* "encourage[ing] the parties to discuss plaintiff's fee request with a view to reaching agreement as to the appropriate amount of fees and costs." *Order*, ECF 24. On November 17, 2014, the parties filed a *Joint Motion for Costs and Attorney Fees Pursuant to Fed. R. Civ. P. 68(a)*, 42 U.S.C. § 1983 and 42 U.S.C. § 1988, ECF 25. The parties

jointly move the Court to enter judgment in Plaintiff's favor in the amount of \$13,328.75, which includes Defendants' \$4,500 offer of judgment, plus, pursuant to 42 U.S.C. §§ 1983 and 1988, and agreed-upon award of attorney's fees and costs of \$8,828.75.

Id. The parties represent that the

requested amount is a reduction of \$3,106.35 in the amount originally requested by Plaintiff, *see* Doc. 19, and has been agreed to by the parties as a full and final settlement of this action, including any appeal by Defendants of this Court's Order of October 24, 2014 (Doc. 23).

Id. The parties have stipulated that "the sum of \$8,828.75 [is] a reasonable amount of fees and costs to which Plaintiff is entitled."

Id.

Upon consideration of all the appropriate factors and the parties' arguments, *see* ECF 19, 20, 21, 24, the Court concludes that the requested fee is reasonable. It is therefore **RECOMMENDED** that the Court enter final judgment in plaintiff's favor in the amount of \$13,328.75, which includes defendants' \$4,500 offer of judgment, plus an award of reasonable attorney's fees and costs of \$8,828.75 pursuant

to 42 U.S.C. §§ 1983 and 1988.

If any party seeks review by the District Judge of this *Report and Recommendation*, that party may, within fourteen (14) days, file and serve on all parties objections to the *Report and Recommendation*, specifically designating this *Report and Recommendation*, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Response to objections must be filed within fourteen (14) days after being served with a copy thereof. Fed. R. Civ. P. 72(b).

The parties are specifically advised that failure to object to the *Report and Recommendation* will result in a waiver of the right to *de novo* review by the District Judge and of the right to appeal the decision of the District Court adopting the *Report and Recommendation*. See *Thomas v. Arn*, 474 U.S. 140 (1985); *Smith v. Detroit Fed'n of Teachers, Local 231 etc.*, 829 F.2d 1370 (6th Cir. 1987); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

November 19, 2014

s/Norah McCann King
Norah McCann King
United States Magistrate Judge